

PETER D. KEISLER  
Assistant Attorney General  
SCOTT N. SCHOOLS  
Acting United States Attorney  
R. MICHAEL UNDERHILL  
Attorney in Charge, West Coast Office  
Torts Branch, Civil Division  
U.S. Department of Justice  
7-5395 Federal Bldg., Box 36028  
450 Golden Gate Avenue  
San Francisco, California 94102-3463  
Telephone: (415) 436-6648  
[mike.underhill@usdoj.gov](mailto:mike.underhill@usdoj.gov)

ELLEN M. MAHAN  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

STEVE O'ROURKE  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-2779  
[steve.o'rourke@usdoj.gov](mailto:steve.o'rourke@usdoj.gov)

Attorneys for Plaintiff  
United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARITIME LOGISTICS, INC., ALAN  
CARPENTER and TRACY RAGSDALE  
CARPENTER, *in personam*, and M/V MICHAEL  
UHL, her engines, apparel, electronics, tackle,  
aircraft, boats, appurtenances, etc., *in rem*,

Defendants.

Civil No.  
IN ADMIRALTY

VERIFIED COMPLAINT OF  
THE UNITED STATES

VERIFIED COMPLAINT

1 Plaintiff, the United States of America, alleges upon information and belief as follows:

2 **NATURE OF THE ACTION**

3 1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully  
4 appears, and within Rule 9(h) of the Federal Rules of Civil Procedure, and, further, is an action  
5 brought, as applicable, under the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2701, *et seq.*, the  
6 National Marine Sanctuaries Act ("NMSA"), 16 U.S.C. §§ 1431, *et seq.*, and the Comprehensive  
7 Environmental Response, Compensation National Marine Sanctuaries Act ("CERCLA"), 42 U.S.C.  
8 §§ 9001, *et seq.*, for damages, removal, and response costs against Defendants MARITIME  
9 LOGISTICS, INC. ("MARITIME LOGISTICS"), and ALAN CARPENTER and TRACY RAGS-  
10 DALE CARPENTER ("CARPENTERS"), *in personam*, and M/V MICHAEL UHL, *in rem*.

11 **JURISDICTION AND VENUE**

12 2. The United States is authorized to bring this suit and the Court has jurisdiction  
13 pursuant to 28 U.S.C. § 1345, 33 U.S.C. §§ 1321 and 2717, 42 U.S.C. §§ 9613(b) and 9613(e), and  
14 16 U.S.C. §§ 1437 and 1443.

15 3. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1391 and 1395, 33 U.S.C.  
16 § 2717, 42 U.S.C. § 9613(b), and 16 U.S.C. § 1443.

17 **DEFENDANTS**

18 4. At all times material herein, defendant M/V MICHAEL UHL, her engines, apparel,  
19 electronics, tackle, aircraft, boats, appurtenances, *etc.*, *in rem*, was a vessel registered in the United  
20 States and is now or during the pendency of this action will be within the navigable waters of this  
21 District and within the jurisdiction of this Honorable Court.

22 5. At all times material herein, defendant MARITIME LOGISTICS was a California  
23 corporation and had a place of business and/or was doing business within this district and within the  
24 jurisdiction of this Court, including, but not limited to, through operation of M/V MICHAEL UHL  
25 at the time of, and with respect to, the matters sued upon herein.

26 6. At all times material herein, MARITIME LOGISTICS owned M/V MICHAEL UHL.

1           7.     At all times material herein, MARITIME LOGISTICS operated M/V MICHAEL  
2 UHL.

3           8.     At all times material herein, MARITIME LOGISTICS managed M/V MICHAEL  
4 UHL.

5           9.     At all times material herein, MARITIME LOGISTICS chartered M/V MICHAEL  
6 UHL.

7           10.    At all times material herein, MARITIME LOGISTICS controlled M/V MICHAEL  
8 UHL.

9           11.    At all times material herein, P/C ALBION was a vessel subject to the laws of  
10 the United States.

11          12.    At all times material herein, P/C ALBION was owned by defendants ALAN  
12 CARPENTER and TRACY RAGSDALE CARPENTER.

13          13.    At all times material herein, defendant ALAN CARPENTER was a resident  
14 of the State of California and/or had a place of business and/or was doing business within this district  
15 and within the jurisdiction of this Court, including, but not limited to, through the acts, sinking, and  
16 subsequent events involving P/C ALBION that form the basis of this Complaint and action.

17          14.    At all times material herein, defendant TRACY RAGSDALE CARPENTER was a  
18 resident of the State of California and/or had a place of business and/or was doing business within  
19 this district and within the jurisdiction of this Court, including, but not limited to, through the acts,  
20 sinking, and subsequent events involving P/C ALBION that form the basis of this Complaint and  
21 action.

22          15.    At all times material herein, P/C ALBION was under tow by M/V MICHAEL UHL  
23 as a "dead tow".

24          16.    At all times material herein, P/C ALBION, while under tow by M/V MICHAEL  
25 UHL, was unmanned.

26          17.    At all times material herein, P/C ALBION, while under tow by M/V MICHAEL  
27

1 UHL, was not self-propelled.

2 18. At all times material herein, P/C ALBION, while under tow by M/V MICHAEL  
3 UHL as aforesaid, was operated by MARITIME LOGISTICS and M/V MICHAEL UHL.

4 19. At all times material herein, P/C ALBION, while under tow by M/V MICHAEL  
5 UHL as aforesaid, was managed by MARITIME LOGISTICS and M/V MICHAEL UHL.

6 20. At all times material herein, P/C ALBION, while under tow by M/V MICHAEL  
7 UHL as aforesaid, was controlled by MARITIME LOGISTICS and M/V MICHAEL UHL.

8 21. At all times material herein, P/C ALBION, while under tow by M/V MICHAEL  
9 UHL as aforesaid, was navigated by MARITIME LOGISTICS and M/V MICHAEL UHL.

10 22. At all times material herein, and by reason of the matters alleged in this Complaint,  
11 the CARPENTERS were "responsible parties" within the meaning of the Oil Pollution Act of 1990,  
12 33 U.S.C. § 2701, *et seq.*

13 23. At all times material herein, and by reason of the matters alleged in this Complaint,  
14 Defendant MARITIME LOGISTICS was a "responsible party" within the meaning of the Oil  
15 Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*

16 24. At all times material herein, and by reason of the matters alleged in this Complaint,  
17 the CARPENTERS were "responsible parties" within the meaning of the Comprehensive  
18 Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, *et. seq.*

19 25. At all times material herein, and by reason of the matters alleged in this Complaint,  
20 Defendant MARITIME LOGISTICS was a "responsible party" within the meaning of CERCLA, 42  
21 U.S.C. § 9601, *et. seq.*

22 26. At all times material herein, and by reason of the matters alleged in this Complaint,  
23 Defendant M/V MICHAEL UHL was a "responsible party" within the meaning of CERCLA, 42  
24 U.S.C. § 9601, *et. seq.*

**THE OIL POLLUTION ACT OF 1990**

27. The United States brings this action on behalf of the Oil Spill Liability Trust Fund (hereafter "Fund"), pursuant to OPA to recover any and all removal costs and damages incurred directly by the Fund, any removal costs and damages incurred by the Fund through compensation paid to any claimant, and all costs incurred by the Fund by reason of any such claims, including interest, prejudgment interest, adjudicative costs, and attorney's fees.

**THE NATIONAL MARINE SANCTUARIES ACT**

28. The United States also brings this action on behalf of the Dept. Of Commerce, National Oceanic and Atmospheric Administration (NOAA), pursuant to the National Marine Sanctuaries Act ("NMSA") (formerly the Marine Protection, Research, and Sanctuaries Act), 16 U.S.C. §§ 1431, *et seq.*, for damages and other relief.

29. Congress enacted the National Marine Sanctuaries Act ("NMSA") in order to recognize and protect certain areas of the marine environment that possess conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or esthetic qualities. 16 U.S.C. § 1431(a)(1) & (2).

30. On September 18, 1992, the National Oceanic & Atmospheric Administration ("NOAA") established the Monterey Bay National Marine Sanctuary ("MBNMS") citing its "highly productive ecosystem;" "wide variety of marine habitat;" "highly diverse floral and fauna;" outstanding concentration of pinnipeds, whales, otters, and seabirds; and its "high water quality," among other attributes, as justification for its designation. 57 Fed. Reg. 43310; 16 U.S.C. § 1433. The President designated the Secretary of the Department of Commerce ("Department") as the trustee of natural resources managed or controlled by the Department and that are found in or under waters navigable by deep draft vessels. 40 C.F.R. § 300.600(b)(1).

31. Pursuant to Department Organization Order 25-5, the Secretary of the Department of Commerce delegated authority to administer the National Marine Sanctuary Program, including the MBNMS to the Under Secretary for Oceans and Atmosphere in NOAA.

1 32. Under the NMSA, 16 U.S.C. § 1431, *et seq.*, any person who destroys, causes the  
2 loss of, or injures any sanctuary resource is liable to the United States for response costs and  
3 damages resulting from such destruction, loss, or injury. *Id.* at §1443(a)(1).

4 33. The NMSA defines "sanctuary resource" as "any living or nonliving resource of a  
5 national marine sanctuary that contributes to the conservation, recreational, ecological, historical,  
6 educational, cultural, archaeological, scientific or aesthetic value of the sanctuary." *Id.* at § 1432(8).

7 34. The NMSA defines "response costs" as "the costs of actions taken or authorized by  
8 the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the  
9 imminent risks of such destruction, loss, or injury, including costs related to seizure, forfeiture,  
10 storage, or disposal arising from liability under Section 1443 of this title." *Id.* at § 1432(7).

11 35. The NMSA defines "damages" as, *inter alia*: a) compensation for (i)(I) the cost of  
12 replacing, restoring, or acquiring the equivalent of a sanctuary resource, and; (II) the value of the lost  
13 use of a sanctuary resource pending its restoration or replacement or acquisition of an equivalent  
14 sanctuary resource; or (ii) the value of a sanctuary resource if the sanctuary resource cannot be  
15 restored or replaced or if the equivalent of such resource cannot be acquired; b) the cost of damage  
16 assessments; (c) the reasonable cost of monitoring appropriate to the injured, restored, or replaced  
17 resources; and (d) the cost of enforcement actions undertaken by the Secretary in response to the  
18 destruction or loss of, or injury to, a sanctuary resource. *Id.* at § 1432(6).

19 36. The NMSA empowers the Secretary to request that the Attorney General commence  
20 a civil action for the recovery of response costs and damages from a party who has violated the Act.  
21 *Id.* at § 1443(c).

22 CERCLA

23 37. The United States also brings this action pursuant to CERCLA for damages and other  
24 relief.

25 //

**GENERAL ALLEGATIONS**

38. In or about January of 2005, M/V MICHAEL UHL undertook and commenced the tow of P/C ALBION from a port in California. On information and belief, neither MARITIME LOGISTICS nor M/V MICHAEL UHL, nor persons acting for or on their behalf, undertook a pre-tow survey of P/C ALBION, nor did said parties require such a pre-tow survey of P/C ALBION as a condition of undertaking the tow.

39. On or about January 31, 2005, P/C ALBION, while under tow by M/V MICHAEL UHL, sank in the waters of the Monterey Bay National Marine Sanctuary ("The Sanctuary"), said waters comprising waters subject to the NMSA, 16 U.S.C. §§ 1431, *et seq.*, and also comprising navigable waters of the United States.

40. The sinking of P/C ALBION, as aforesaid, posed a substantial threat of the discharge of oil into and upon the navigable waters and adjoining shorelines of the United States, with direct effect upon same and, moreover, actually caused the discharge of oil into and upon the navigable waters of the United States, with direct and continuing effects upon same. The said substantial threat of discharge and the actual discharge of oil are hereafter referred to as the "OPA Incident".

41. The sinking of P/C ALBION, as aforesaid, caused the destruction of and/or caused the loss of and/or caused injury to The Sanctuary and its resources, with direct and continuing effects upon same, thereby resulting in, *inter alia*, response costs and damages as defined in the NMSA. The response costs and damages necessitated by the destruction and/or loss of and/or injury to The Sanctuary and its resources are hereafter referred to as the "Sanctuary Incident".

42. The sinking of P/C ALBION, as aforesaid, posed a substantial threat of the release of a hazardous substance, *i.e.*, lead attached to portions of P/C ALBION's keel and/or hull, into navigable waters of the United States, with direct effect upon same. The said substantial threat of release of a hazardous substance is hereafter referred to as the "CERCLA Incident".

43. The OPA Incident, the CERCLA Incident, and the Sanctuary Incident, unless referred to otherwise, collectively shall be referred to as the "Incident".

1       44.     The Incident was proximately caused, *inter alia*, by the acts, omissions, strict  
2 liability, fault, negligence, and breach of federal safety and operating regulations by Defendants, the  
3 vessels' owners, crew (in the case of M/V MICHAEL UHL) , agents, servants, employees, and  
4 others for whom Defendants were responsible, all within the privity and knowledge of the  
5 Defendants.

6       45.     Following the OPA Incident, the United States of America, by and through its  
7 various agencies and others acting on its behalf, responded and incurred OPA pollution removal  
8 costs and damages subject to the provisions of OPA.

9       46.     Following the Sanctuary Incident, the United States of America, by and through its  
10 various agencies and others acting on its behalf, responded and incurred response costs and damages  
11 subject to the provisions of the NMSA.

12       47.     Following the CERCLA Incident, the United States of America, by and through its  
13 various agencies and others acting on its behalf, responded and incurred CERCLA costs and  
14 damages subject to the provisions of CERCLA.

15       48.     The precise amount of OPA pollution removal costs and damages as a result of the  
16 OPA Incident presently amounts to approximately \$1,207,063.57, with the exact amount of said  
17 damages to be established according to proof at the time of trial.

18       49.     The precise amount of response costs and damages sustained by the United States or  
19 that shall in the future be sustained as a result of the Sanctuary Incident presently is not known and  
20 shall be established according to proof at the time of trial.

21       50.     The precise amount of response costs and damages sustained by the United States as  
22 a result of the CERCLA Incident presently is not known and shall be established according to proof  
23 at the time of trial.

24 //

25

26

27

28 VERIFIED COMPLAINT



**AS AND FOR A FIRST CAUSE OF ACTION AGAINST  
CARPENTERS AND MARITIME LOGISTICS  
(OIL POLLUTION ACT OF 1990)**

51. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

52. Pursuant to the Oil Pollution Act of 1990, each responsible party for a vessel from which oil is discharged, or which poses the substantial threat of discharge, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is strictly liable for all costs, damages, and/or disbursements specified in the Act.

53. Under the circumstances herein, the CARPENTERS and MARITIME LOGISTICS are liable to the United States of America, without limitation, for all the aforesaid costs, damages, and/or disbursements sustained by the United States as a result of the OPA Incident.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST  
THE CARPENTERS AND MARITIME LOGISTICS  
(OIL POLLUTION ACT OF 1990)**

54. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

55. Pursuant to the Oil Pollution Act of 1990, the Fund shall be subrogated to all rights, claims and causes of action of claimants to whom it has paid compensation.

56. As a result of the OPA Incident, the Fund may incur costs, damages, and/or disbursements by reason of claims for removal costs and damages brought against it under the Oil Pollution Act of 1990.

57. Pursuant to the Oil Pollution Act of 1990, the CARPENTERS and MARITIME LOGISTICS are liable to the United States of America, without limitation, for all such costs, damages, and/or disbursements which may be sustained by the Fund.

//

1                   **AS AND FOR A THIRD CAUSE OF ACTION AGAINST**  
2                   **THE CARPENTERS AND MARITIME LOGISTICS, *IN PERSONAM*, AND**  
3                   **M/V MICHAEL UHL, *IN REM***  
4                   **(NATIONAL MARINE SANCTUARIES ACT)**

5           58.     Plaintiff, United States of America, refers to and incorporates by reference as though  
6 fully set forth herein each and every foregoing paragraph of this Complaint.

7           59.     Pursuant to the NMSA, any person who destroys and/or causes the loss of and/or  
8 injures The Sanctuary and its resources are strictly liable for, *inter alia*, all damages, response costs,  
9 and interest thereon.

10          60.     Pursuant to the NMSA, vessels used to destroy and/or cause the loss of and/or  
11 injure The Sanctuary and its resources are strictly liable *in rem* and are subject to a maritime lien for  
12 all response costs, damages, and/or disbursements specified in the Act.

13          61.     As a direct and proximate result of the actions set forth in the United States'  
14 Complaint, Defendants are liable to the United States, without limitation, by virtue of the NMSA,  
15 16 U.S.C. §§ 1437 and 1443, for all response costs and damages.

16                   **AS AND FOR A FOURTH CAUSE OF ACTION AGAINST**  
17                   **THE CARPENTERS AND MARITIME LOGISTICS**  
18                   **(NATIONAL MARINE SANCTUARIES ACT – INJUNCTIVE RELIEF)**

19          62.     Plaintiff, United States of America, refers to and incorporates by reference as though  
20 fully set forth herein each and every foregoing paragraph of this Complaint.

21          63.     Pursuant to, *inter alia*, the NMSA, 16 U.S.C. § 1437(c), the United States has  
22 authority to seek injunctive and such other relief as may necessary against persons and entities  
23 subject to the NMSA.

24          64.     The United States seeks injunctive relief against the CARPENTERS and  
25 MARITIME LOGISTICS, said injunctive relief requiring said defendants to remove any and all  
26 portions of P/C ALBION from The Sanctuary and all navigable waters of the United States.

1 AS AND FOR A FIFTH CAUSE OF ACTION AGAINST  
2 THE CARPENTERS AND MARITIME LOGISTICS, *IN PERSONAM*, AND  
3 M/V MICHAEL UHL, *IN REM*  
4 (CERCLA RESPONSE COSTS)

5 65. Plaintiff, United States of America, refers to and incorporates by reference as though  
6 fully set forth herein each and every foregoing paragraph of this Complaint.

7 66. Pursuant to CERCLA, Responsible Parties, including owners and operators of  
8 vessels from which hazardous substances are released or which pose the substantial threat of release  
9 into the environment and/or navigable waters of the United States are strictly liable for all costs,  
10 damages, and/or disbursements specified in the Act.

11 67. Pursuant to CERCLA, vessels from which hazardous substances are released or  
12 which pose the substantial threat of release into the environment and/or navigable waters of the  
13 United States are strictly liable *in rem* and are subject to a maritime lien for all costs, damages,  
14 and/or disbursements specified in the Act.

15 68. As a direct and proximate result of the foregoing substantial threat of release of a  
16 hazardous substance, Defendants are liable, without limitation, to the United States by virtue of  
17 CERCLA for all response costs and damages.

18 WHEREFORE, the United States of America prays as follows:

19 1. That United States of America be granted judgment against all Defendants, jointly  
20 and severally, pursuant to the Verified Complaint of the United States herein;

21 2. That if defendants MARITIME LOGISTICS and the CARPENTERS cannot be found  
22 within this District, then, pursuant to Supplemental Admiralty Rule B of the Federal Rules of Civil  
23 Procedure, that all of any such absent defendant's property of any description, whatsoever, including  
24 other vessels or real property, located within this District be attached for up to the amounts sued for  
25 herein, and condemned and sold to pay the amounts due plaintiff herein;

26 3. That actual notice of the commencement of this suit, in a manner approved by the  
27

1 Court, be given to the custodian, master or other ranking officer of M/V MICHAEL UHL, as may  
2 be applicable, and to any person, firm or corporation which has recorded a notice of claim of any  
3 undischarged lien upon the said Vessel;

4 4. That, pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty and  
5 Maritime Claims this Honorable Court enter an order authorizing a warrant for the arrest of M/V  
6 MICHAEL UHL, her engines, tackle, appurtenances, etc.;

7 5. That a warrant issue for the arrest of M/V MICHAEL UHL, her engines, tackle,  
8 appurtenances, etc.;

9 6. That judgment of condemnation and sale be entered against the M/V MICHAEL  
10 UHL, her engines, tackle, appurtenances, etc.;

11 7. That plaintiff United States of America be declared the holder of a valid preferred  
12 maritime lien on the M/V MICHAEL UHL, *in rem*;

13 8. That the M/V MICHAEL UHL be sold and the proceeds of the Vessel be applied first  
14 to any judgments, costs, and expenses of the United States with respect to the complaint of the  
15 United States herein;

16 9. For such other relief as the Court deems just and proper in the premises.

17 Dated: October 9, 2007.

18 PETER D. KEISLER  
19 Assistant Attorney General  
20 SCOTT N. SCHOOLS  
21 Acting United States Attorney

22 R. MICHAEL UNDERHILL  
23 Attorney In Charge, West Coast Office  
24 Torts Branch, Civil Division  
25 U.S. Department of Justice

25 //  
26 //  
27 //

28 VERIFIED COMPLAINT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ELLEN M MAHAN  
Deputy Section Chief  
Environmental Enforcement Section  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

STEVEN O'ROURKE  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Attorneys for Plaintiff  
United States of America

VERIFICATION

R. Michael Underhill says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. §1746, that the foregoing is true and correct.

Dated: October 9, 2007.

R. MICHAEL UNDERHILL